

[Cite as *Ohio Child Support Enforcement Agency ex rel. Sutich v. Segedi*, 2010-Ohio-5360.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94309

**STATE OF OHIO, CHILD SUPPORT
ENFORCEMENT AGENCY, EX REL.
JUSTINE SUTICH**

PLAINTIFF-APPELLEE

vs.

RAYMOND SEGEDI

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Court Division
Case No. SU-97774650

BEFORE: Celebrezze, J., Blackmon, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: November 4, 2010

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, Raymond Segedi, appeals from the imposition of a jail sentence after failing to make child support payments. He argues that the contempt order that resulted in the jail sentence had been purged. After a thorough review of the record and based on the following law, we reverse the determination of the trial court and remand.

{¶ 2} Through a prior order, appellant was required to pay child support for his minor daughter. He failed to make timely payments. At a November 16, 2007 hearing on the State of Ohio and Cuyahoga County Child Support Enforcement Agency's ("CSEA") show cause motion, he was found to be in arrears in the amount of \$13,057.58. The trial court found that

appellant was in contempt and imposed a 45-day jail sentence, which was suspended. Appellant could avoid jail in one of two ways. He could make regular monthly payments of \$675.73 (plus a two percent service fee) for a period of 12 months. He could also purge the order by making a \$1,300 lump-sum payment within 90 days of the contempt order dated January 11, 2008.

{¶ 3} Appellant alleges that he lost his job and was unable to make payments as required. Some months he did make payments, but never in the amount required. Appellant also provided his daughter with health insurance even though that was not required. On July 16, 2008, CSEA brought a motion to impose the suspended sentence for failure to satisfy either purge condition. Through negotiations, the parties agreed that if appellant could make a \$2,000 payment to CSEA before the next hearing date on its motion, it would withdraw the motion and it would be dismissed without prejudice. On the morning of the next hearing, November 24, 2008, appellant made the \$2,000 payment and CSEA's motion was dismissed without prejudice.

{¶ 4} Several months later, on March 18, 2009, appellant was again behind on his child support payments, and CSEA filed the same motion that had earlier been dismissed without prejudice, seeking to enforce the 45-day jail term. Appellant objected stating he had purged the prior contempt order according to the trial court's November 24, 2008 judgment entry, which

stated, “Defendant is in substantial compliance therefore the Motion is dismissed without prejudice.” CSEA argued that the trial court was referring to the settlement agreement when it mentioned substantial compliance, not the contempt order. The state admitted that appellant was in substantial compliance with the settlement agreement since he had paid \$2,000 the morning of the hearing on CSEA’s motion. The settlement agreement had called for payment before the day of the next hearing. The trial court agreed, found that appellant had not purged the contempt order, and executed sentence. The court also found that appellant had made roughly half his required child support payments and only sentenced him to 20 days in jail. Appellant then appealed the determination alleging one assignment of error.

Law and Analysis

{¶ 5} Appellant argues that “[t]he trial court abused its discretion and committed prejudicial error when it found [him] in contempt of an order he previously purged.” The Ohio Supreme Court has held that the standard of review in matters concerning child support is abuse of discretion. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 541 N.E.2d 1028. To constitute an abuse of discretion, the ruling must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140. “The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations.” *State v. Jenkins*

(1984), 15 Ohio St.3d 164, 222, 473 N.E.2d 264, quoting *Spalding v. Spalding* (1959), 355 Mich. 382, 384-385, 94 N.W.2d 810. In order to have an abuse of that choice, the result must be “so palpably and grossly violative of fact and logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance thereof, not the exercise of reason but rather of passion or bias.” Id.

{¶ 6} “[T]he power of contempt is inherent in a court, such power being necessary to the exercise of judicial function * * *.’ *DeNovchek v. Bd. of Trumbull Comm.* (1988), 36 Ohio St.3d 14, 15, 520 N.E.2d 1362. Civil contempt utilizes a sanction that is imposed to coerce the contemnor to comply with the court’s order. *ConTex Inc. v. Consolidated Technologies, Inc.* (1988), 40 Ohio App.3d 94, 531 N.E.2d 1353.” *Offenberg v. Offenberg*, Cuyahoga App. Nos. 78885, 78886, 79425, and 79426, 2003-Ohio-269, ¶73. Any sanction for civil contempt must allow the party who is in contempt an opportunity to purge the contempt. *Carroll v. Detty* (1996), 113 Ohio App.3d 708, 712, 681 N.E.2d 1383. If a party makes a good faith effort to pay support, contempt is not justified. *Courtney v. Courtney* (1984), 16 Ohio App.3d 329, 475 N.E.2d 1284. “Civil contempt sanctions are designed for remedial or coercive purposes and are often employed to compel obedience to a court order.” *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 555, 2001-Ohio-15, 740 N.E.2d 265, citing *Shillitani v. United States* (1966), 384 U.S. 364, 370, 86 S.Ct. 1531, 16 L.Ed.2d 622. However, substantial

compliance with the conditions set forth to purge the finding of contempt can be a defense to a finding of contempt. *State ex rel. Curry v. Grand Valley Local Schools Bd. of Ed.* (1980), 61 Ohio St.2d 314, 315, 401 N.E.2d 925. When a party substantially complies with the order, the reason for the contempt sanction no longer exists and execution of sentence is not appropriate.

{¶ 7} Here, the November 24, 2008 journal entry indicates that appellant was in substantial compliance. This would lead a party to believe that the prior contempt order had been purged even though the word “purged” does not appear in the entry. Appellant failed to satisfy either purge condition in a timely fashion, but the payment of an amount greater than the lump-sum purge condition soon after its expiration leads to the conclusion that appellant made a good-faith effort to pay support. The execution of sentence after a finding of substantial compliance was therefore an abuse of discretion.

{¶ 8} “Parties must be able to rely on the plain language of a trial court’s judgment entry, not what the judge may have intended.” *Zolman v. Zolman* (Sep. 24, 1999), Morrow App. No. CA883, 4 (Wise, J., dissenting). And, while a dismissal without prejudice normally indicates a decision otherwise than on the merits and leaves the parties in the same position as if the motion was never filed,¹ in this case appellant should be able to rely upon

¹ *In re P.B.*, Cuyahoga App. No. 94362, 2010-Ohio-2899, ¶4, citing *Cent. Mut.*

the journal entry finding substantial compliance. When a party pays \$2,000 after the expiration of a purge condition that required a payment of \$1,300, and the trial court indicates that the party is in substantial compliance, the party justifiably relies on that determination. Therefore, CSEA was required to file a new show cause motion for further violations of the court's child support order because the earlier contempt finding was effectively purged by the November 24, 2008 journal entry.

Conclusion

{¶ 9} Appellant's arguments that he had substantially complied with the purge conditions in the January 11, 2008 contempt order are persuasive given the lump-sum payment he made and the language of the November 24 journal entry finding substantial compliance. The trial court abused its discretion in executing sentence on a contempt order after it had been purged. That determination must be reversed.

{¶ 10} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

PATRICIA ANN BLACKMON, P.J., CONCURS;
ANN DYKE, J., CONCURS IN JUDGMENT ONLY